

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission
Appellate Panel

Appellate Case No. 2018-001234

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AUG 29 2018

SC Court of Appeals

COPY

Pamela Cartee, Claimant,

v.

SC Judicial Department, Employer, and State Accident
Fund, Carrier, Defendants.

IN RE:

Preston F. McDaniel, Esquire, and John M. Milling,
Esquire,Appellants,

v.

South Carolina Workers' Compensation Commission,
.....Respondent.

MOTION FOR REHEARING

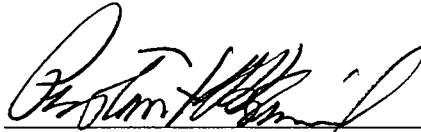
TO: T. PARKIN C. HUNTER, ESQUIRE AND HARLEY L. KIRKLAND, ESQUIRE,
ATTORNEYS FOR THE RESPONDENT:

Pursuant to Rule 240(j), SCACR, the Appellants for the
reasons as set forth in the Memorandum attached hereto and
incorporated herein by reference hereby move for reconsideration

and rehearing as to the Order of the Honorable James E. Lockemy,
Chief Judge of the SC Court of Appeals, issued on August 16, 2018.

WE SO MOVE.

Respectfully submitted:



Preston F. McDaniel, Esquire
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, SC 29201
(803) 771-7211

and

John M. Milling, Esquire
MILLING LAW FIRM
Post Office Box 519
Darlington, SC 29532
(843) 393-4083

Appellants

August 27, 2018

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MEMORANDUM IN SUPPORT OF
MOTION FOR REHEARING

In support of the Motion for Rehearing, the Appellants would respectfully submit to the Court:

1. That the Court should grant rehearing because, as the Record of the Court will show, the Order was issued before the

time expired for the Appellants to file a reply to the return, the Court granted the Respondent SC Workers' Compensation Commission an extension of time in which to file a Return to the Motion that had been filed by the Appellants. That the Return was filed on August 14, 2018. According to the SC Appellate Court Rules, Rule 240(f), the Appellants had a right to file a Reply to the Return within five (5) days of the filing of the Return. However, in this case, on August 16th, two days after the Return was filed, the Court issued its Order. The Court should withdraw the order, grant rehearing and allow the Appellants an opportunity to file a Reply to the Return that was filed in this matter.

2. That the Appellants would respectfully request rehearing or reconsideration as to the caption of this case. Both the Attorney General's Office representing the Commission and the Appellants both moved to have the Commission listed as the Party Respondent and both agreed to the simple inclusion of the Commission as the Respondent in the original caption and both have used a caption in this matter styling the case as "Ex Parte: Preston F. McDaniel, Esquire, and John M. Milling, Esquire, Appellants, IN RE: Pamela Cartee, Claimant, ..." The Court in its latest Order has reversed the caption and the parties in the underlying matter as the first listed non-party/entities in the caption of the case before the Court, the Claimant and the SC

Judicial Department and State Accident Fund as Defendants, above and before the further captioning of "IN RE: Preston F. McDaniel, Esquire, and John M. Milling, Esquire, Appellants, v. SC Workers' Compensation Commission, Respondent."

This action arises out of the refusal of the Commission to approve a portion of the attorneys' fees to which the Appellants are entitled as Attorneys for the Claimant as disputed by the SC Workers' Compensation Commission as Respondent in accordance with statutory, regulatory, and case law in the underlying but totally unrelated matter of Pamela Cartee as a claimant to whom an Award was made by the Commission. The real parties in interest and only parties necessary to this litigation are the Appellants, Mr. McDaniel and Mr. Milling, and the adverse party, the Respondent, the Workers' Compensation Commission. South Carolina Civil Procedures, Dean Harry M. Lightsey, Jr. and Professor James F. Flanagan, USC School of Law, c. 1985, S.C. Bar; Trial Handbook for S.C. Lawyers 5th Edition, Alex Sanders and John S. Nichols 2017-2018, c. West Pub. Co., Inc. 2017; SCRCF Rule 17.

Query: Under the new or current privacy rules/concerns if any reference is made to the underlying/uninvolved matter and/or entities/parties to that action and in this action should it simply be listed as SCWCC No. 1307922 to protect their privacy?

3. That further as to the caption, both of the Appellants,

who are Members of the SC Bar and who have been practicing law for over 41 years, trained under the more stringent Code Pleadings concept of pleadings and, Ex Parte in reference to the situation involved in this case under Black's Legal Dictionary is defined as,

"in its primary sense, ex parte, as applied to an application in a judicial proceeding, means that it is made by a person who is not a party to the proceeding, but who has an interest in the matter which entitles him to make the application."

"In Re:" is defined by Black's Legal Dictionary as meaning, "In the Matter of". Black's goes on to state that this is the usual method of entitling a judicial proceeding in which there are not adversary parties, but merely some interests, "concerning which" judicial action is to be taken.

In this case, Mr. Milling and Mr. McDaniel filed a request for approval of attorneys' fees pursuant to law in reference to their representation of Ms. Cartee in the matter of Pamela Cartee v. SC Judicial Department and State Accident Fund due to their status as attorneys for the Claimant under their Fee Contract. Therefore, the dispute arises out of that underlying matter but does not concern that matter, but it is out of this matter that Mr. Milling and Mr. McDaniel have an, "interests" in the res, their entitlement to attorneys' fees, arising out of that matter. The dispute is not between any of the parties to the underlying

matter of Pamela Cartee versus the SC Judicial Department and State Accident Fund. The dispute arises out of the requirement under law that the Commission approve or disapprove of the attorneys' fees as requested by the Claimant's attorneys. Thus, the parties to that dispute are the two attorneys requesting the Fee, and the Commission, which is the body charged under law with the responsibility of approving or disapproving the Fee as requested. Therefore, the Appellants verily believe that the proper caption should have nothing to do with Ms. Cartee and/or the State Accident Fund and the SC Judicial Department but should involve the "real" parties in interests, who are the Appellants and Respondent in this matter before the Court. The proper caption should either be:

"Ex Parte: Preston F. McDaniel
and John M. Milling,Appellants,

v.

SC Workers' Compensation Commission,Respondent.
IN RE: (SCWCC No. 1307922 or Pamela Cartee, ...)"

Or:

"Preston F. McDaniel and John M. Milling, Appellants,
v.

SC Workers' Compensation Commission,

IN RE: (SCWCC No. 130922 or Pamela Cartee, ...)"

Or simply referring to the real parties in interest as would be

the case in any appeal from a Commission or state decision affecting the rights of a party. (Ex. SC Tax Commission v. Doe or SCDHPT v. Doe). In other words,

"Preston F. McDaniel and John M. Milling,Appellants,
v.

SC Workers' Compensation Commission,Respondent."

The Commission made the Decision in this matter that is in dispute. The Appellants were the parties affected by that Decision. The Appellants would respectfully request that the Court reconsider the appropriate caption in this matter, again particularly because Ms. Cartee and the SC Judicial Department, and the State Accident Fund have nothing to do with this dispute as to the attorneys' fees to be approved by the Commission.

4. That in addition to the above, the motions involved with and the basis for this Order are not your standard motions filed in reference to an Appeal and/or the Record or lack thereof, or compliance or noncompliance with the Appellate Court Rules, but are in reference to:

a. A special situation in reference to the captioning of a case.

b. A Declaratory Judgment action filed and pending in the Circuit Court prior to the advent of the Appeal and prior to any final decision by the Commission and filed

in part under S.C. Code §1-23-150.

c. An order of the Circuit Court in that Declaratory Judgment action staying all further action by the Commission before any final Order of the Commission as to the Petition for Rehearing.

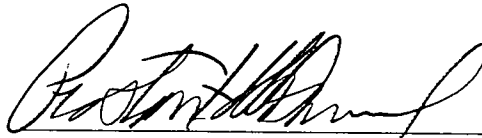
d. Whether with what is already before the Court at the time of the Order, the Commission can deny or refuse Mr. Milling the right to being a party to an action wherein he has a property right as to his entitlement to attorneys fees.

e. To clarify the Court's order to the Appellants, "to inquire as to whether John M. Milling was a party to the attorneys fee petition below".

The parties should be granted a hearing on the motions as is the right of every party in an action and as is consistently scheduled without exception in the Circuit Courts and all other Courts in the State of South Carolina in reference to motions that are filed in Court particularly those involving substantive rights. Due process requires an opportunity to be heard and again, on all substantive motions, our Courts readily provide an opportunity to be heard at a hearing before a ruling is made thereon under the

legal maxim that our law hears before it condemns. Such a hearing was and is respectfully requested in this matter.

Respectfully submitted:



Preston F. McDaniel, Esquire
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(803) 771-7211

and

John M. Milling, Esquire
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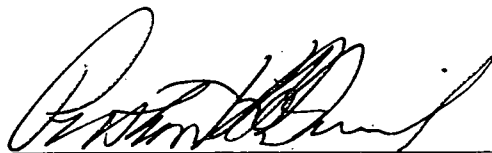
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PROOF OF SERVICE

I certify that I have served the **MOTION FOR REHEARING** with
MEMORANDUM IN SUPPORT OF by depositing a copy of same in the
United States Mail, postage prepaid, on August 27, 2018
addressed to:

Alan T. Wilson
SC Attorney General
T. Parkin C. Hunter, Esquire
Senior Assistant Attorney General
Harley L. Kirkland, Esquire
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549



By: Preston F. McDaniel
MCDANIEL LAW FIRM
1315 Elmwood Avenue
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(803) 771-7211

and

John M. Milling
SC Bar #: 3994
MILLING LAW FIRM
Post Office Box 519
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APPELLANTS

August 27, 2018

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 30 years.

Preston F. McDaniel

Matthew Robertson

Telephone (803) 771-7211

Facsimile (803) 252-0709

August 27, 2018.

Honorable James E. Lockemy
Chief Judge
SC Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Pamela Cartee, Claimant,

v.

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Accident Fund, Carrier, Defendants,**

IN RE:

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Dear Judge Lockemy:

Attached is the Motion per your Order of August 16, 2018 ordering Mr. Milling and me as Appellants to file a Motion with the Commission, "to inquire as to whether Mr. Milling was a party to the Attorneys' Fee Petition below". Attached to the Motion, I have attached a review of the Record referencing Mr. Milling's appearance and inclusion in the Record as an Attorney of Record in this matter.

Also attached and which I am serving on Counsel of Record for the Respondent is a Motion for Rehearing in reference to the Order of the Court pursuant to Rule 240(j), SCACR, which specifically allows for rehearing in reference to an Order issued by a Judge of the Court. You will find that one of the primary purposes of the Request for Rehearing is really a request for clarification in reference to the caption.

This an unusual situation and I would sincerely appreciate it if we could be granted a brief hearing before the Court in reference to the Motion for Rehearing. The Motions that have been filed and may be filed in this matter are outside of the normal

Honorable James E. Lockemy
August 27, 2018
Page 2

and usual Motions that are filed before the Court which are usually based upon the Record or a lack therefore, and/or compliance with the Rules which do not require a hearing. As far as I know, this is one of the first instances to come before the Court since the 2007 amendments that made the Court the Court of original appellate jurisdiction in workers' compensation matters and addressing issues that were traditionally handled by the Circuit Court.

Therefore, in reference to these substantive motions affecting the rights of the parties, I would respectfully ask for the hearing because I believe due process in reference to this type of a motion requires that we be given an opportunity to be heard.

Mr. Milling and I would respectfully request compliance with Rule 240(c)(3), SCACR.

I look to hearing from the Commission and the Court. The required filing fee for the Motion for Rehearing is attached hereto along with Proofs of Service on all Counsel of Record.

Sincerely yours,

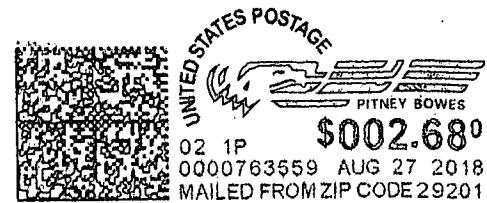
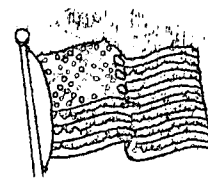
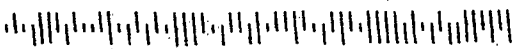


Preston F. McDaniel

On Behalf of:
Preston F. McDaniel, Esquire
and John M. Milling, Esquire
Appellants

PFM/kth/abh
Enclosures

cc: Hon. Jenny A. Kitchings
Ms. Amy Bracy
John M. Milling, Esquire
Alan T. Wilson, SC Attorney General
T. Parkin C. Hunter, Esquire
Harley L. Kirkland, Esquire



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